

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

CRYSTAL GOOD, et al.,

Plaintiffs

v.

WEST VIRGINIA-AMERICAN WATER
COMPANY,
et al.,

Defendants.

Civil Action No. 2:14-CV-01374
Hon. John T. Copenhaver, Jr.

Consolidated with:
Civil Action No. 2:14-CV-13164
Civil Action No. 2:14-CV-11011
Civil Action No. 2:14-CV-13454

CLASS ACTION

**APPLICATION FOR APPROVAL TO PAY INDIVIDUAL REVIEW OPTION CLAIMS
AND SETTLEMENT ADMINISTRATION COSTS**

The parties and Court-appointed Settlement Administrator, Smith Cochran Hicks PLLC (“SCH”), respectfully apply to the Court to approve the distribution of payment for thirteen (13) final and approved individual review option claims and settlement administration costs.

1. The approved Individual Review Option Claims in the amount of \$2,882,542.75 are detailed in the attached Schedule included as Exhibit 1, pursuant to Section 6.2.2.2 of the Amended Class Action Settlement Agreement (“ASA”) (Doc. 1163-1) approved by this Court’s Order Granting Final Approval of the Good Class Settlement and Entering Judgment (Doc. 1212).

Section 6.2.2.2 of the ASA provides as follows:

If after distribution of the Simple Claim Form Payments and issuance of the checks through the Check Distribution Process, and after accounting for payments for associated Administrative Expenses and Attorneys’ Fees and Litigation Expenses, and after full evaluation of the Individual Review Option claims, the Settlement Administrator determines that there are sufficient remaining assets to pay uncontested Individual

Review Option claims pending final review of contested Individual Review Option claims so that the payment of both uncontested and contested Individual Review Option claims is assured, the Settlement Administrator may seek permission from the Court to distribute payment for the approved uncontested Individual Review Option claims before completing the full evaluation of contested Individual Review Option claims. The Settlement Administrator may seek such permission by filing an application to distribute after providing reasonable notice to the Parties that includes the date on which the Settlement Administrator plans to file such application. The Parties shall have the right to submit responses to such application by the Settlement Administrator on the date the Settlement Administrator files the application. The Court may authorize or deny such distribution based on the evidence provided by the Settlement Administrator and taking into account the responses provided by the Parties.

SCH keeps the parties and the Court aware on a regular basis of the status of its efforts to administer the settlement in this action. The parties are aware that SCH is making this application on this date and join in the request for Court approval of the distribution outlined on the attached Schedule.

2. This application for payment includes nine (9) Individual Review Option Medical Claims and two (2) Individual Review Option Pregnancy Claims. All Individual Review Option Medical and Pregnancy claimants were submitted to The Centers for Medicare and Medicaid Services (“CMS”) for Verification of Enrollment (“VOE”). The CMS VOE results indicated that eight (8) of the Individual Review Option Medical and Pregnancy claimants included in this application matched enrollment records in CMS systems. CMS has reviewed the eight (8) claimants and determined that the recovery amount for these claims in the aggregate totals \$20,501.75¹.

3. The West Virginia Department of Health and Human Resources, Bureau for Medical Services (“BMS”) in a written communication, dated October 30, 2018, represented that it has no legal right to, and will not pursue, a Medicaid subrogation lien with respect to any of the Individual Review Option Medical and Pregnancy Claims where the settlement amount for

¹ This recovery amount is included in the Individual Review total amount noted in Section 1 and Exhibit 1.

the claim is below the applicable threshold of \$20,000 for instituting recovery actions. All Individual Review Option Medical claimants with claim amounts above the \$20,000 threshold were submitted to BMS for verification of enrollment. The BMS enrollment verification results indicated that two (2) of the claimants included in this application had Medicaid enrollment. BMS has reviewed the two (2) claimants and determined that the recovery amount is \$1,495.80². Accordingly, all potential lien obligations with respect to Medicare as administered by CMS and with respect to Medicaid as administered by BMS have been resolved for the Individual Review Option Medical claimants in this application³.

4. This application for payment includes an invoice of \$3,500 from JND Mass Tort and Lien Resolution. Under Exhibit 3 to the ASA, the Distribution Protocols (Doc. 1163-1, p. 93 of 231) at Section X, the Settlement Administrator is required to resolve (through payment or negotiated resolution) any applicable liens as provided at Section 6.5 of the ASA. This process was coordinated with the services of JND Mass Tort and Lien Resolution. The amounts billed are for the resolution of liens on an individual basis for Other Medical Issues Claims, in accordance with the fees authorized by the Court's order dated March 5, 2019 (Doc. 1256).

5. This application includes an invoice of \$4,900 from West Virginia Medical Corporation dba University Health Associates for the medical expert records review performed by Dr. John Brick. Per Exhibit 3 to the ASA, the Distribution Protocols (Doc 1163-1, p. 111) at Section VII.B.5, for purposes of resolving objections related to any Other Medical Issues Claims, the Settlement Administrator must retain consulting medical experts. This invoice is for the

² This recovery amount is included in the Individual Review total amount noted in Section 1 and Exhibit 1

³ The recovery amounts listed in Sections 2 and 3 totaling \$21,997.55 need to be paid before CMS and BMS will release the claims. The release on any applicable liens will also allow for the payment of any previously approved Simple Claims filed by claimants included in this application.

medical expert review of thirteen (13) Individual Review Option Medical Claims requested for a second review.

6. The Settlement Administration fees for the Individual Review Option claims included in this application total \$3,360. The parties have reviewed this amount and conclude that the amount requested is in accordance with the fee schedule outlined in the Renewed Joint Motion for Preliminary Approval and the engagement document provided to the Court on July 5, 2018. The parties request the Court's approval to pay these fees from the Contingent Fund as specified in the ASA.

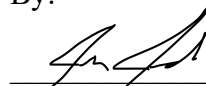
7. The Individual Review Option claims, including recovery amounts, and administration costs included in this application do not exceed the Contingent Fund Balance on hand. As such, no additional funding contribution is needed make this distribution.

For the foregoing reasons, the parties and SCH apply to the Court for its approval under Section 6.2.2.2 of the ASA and Section XI of the Distribution Protocols to distribute funds by check for the uncontested Individual Review Option Claims and settlement administration fees as more fully described on the attached Schedule.

Respectfully submitted,

DATED: September 20, 2019

By:



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SETTLEMENT ADMINISTRATOR

and

/s/ Van Bunch

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On Behalf of the Settling Parties

Exhibit 1
Distribution Schedule

Claim Type	# Claims	Value
Individual Review - Medical	9	\$606,437.32 **
Individual Review - Pregnancy	2	\$3,000.00
Individual Review - Business	1	\$142,105.43
Individual Review - Government	1	\$2,131,000.00
Individual Review Claims Subtotal	13	\$2,882,542.75
JND Mass Tort and Lien Resolution		\$3,500.00
WV Medical Corporation - Med Expert		\$4,900.00
Settlement Administration Fees		\$3,360.00
Total		<u>\$2,894,302.75</u>

**Six of the Nine Medical Claims have final lien recovery amounts which must be paid before CMS and/or BMS will release the claims. The recovery amounts for these six claims total \$21,997.55 and is included in the value noted above.

Claim Type	# Claims	Per claim rate	Amount
Medical	9	\$300.00	\$2,700.00
Pregnancy	2	\$155.00	\$310.00
Business	1	\$175.00	\$175.00
Government	1	\$175.00	\$175.00
	13		\$3,360.00

Per claim rates per SCH Term Sheet previously provided.